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E-filing

10 UNITED STATES DISTRICT COURT
 11 NORTHERN DISTRICT OF CALIFORNIA

BZ

12 CRAIG YATES, an individual,

13 Plaintiff,

14 v.

15 PHO CLEMENT RESTAURANT;
 16 ROBERTO TIM-HUNG LEONG (a.k.a.
 17 ROBERTO LEON) and MARIA LEE
 18 LEONG (a.k.a. MARIA LEON), As
 19 Trustees, OF THE ROBERTO TIM-HUNG
 20 LEONG AND MARIA LEE LEONG
 21 REVOCABLE TRUST DATED MARCH
 22 21, 2000; and QUANG B. TRAN, an
 23 individual dba PHO CLEMENT
 24 RESTAURANT,

25 Defendants.

CASE NO. **10 1410**
 Civil Rights

**COMPLAINT FOR INJUNCTIVE RELIEF
 AND DAMAGES:**

1st CAUSE OF ACTION: For Denial of Access
 by a Public Accommodation in Violation of the
 Americans with Disabilities Act of 1990 (42
 U.S.C. §12101, *et seq.*)

2nd CAUSE OF ACTION: For Denial of Full
 and Equal Access in Violation of California
 Civil Code §§54, 54.1 and 54.3

3rd CAUSE OF ACTION: For Denial of
 Accessible Sanitary Facilities in Violation of
 California Health & Safety Code §19955, *et seq.*

4th CAUSE OF ACTION: For Denial of
 Access to Full and Equal Accommodations,
 Advantages, Facilities, Privileges and/or
 Services in Violation of California Civil Code
 §51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff CRAIG YATES, an individual, complains of defendants ROBERTO TIM-
2 HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON).
3 As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG
4 REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba
5 PHO CLEMENT RESTAURANT and alleges as follows:

6 **INTRODUCTION:**

7 1. This is a civil rights action for discrimination against persons with physical
8 disabilities, of which class plaintiff CRAIG YATES and the disability community are members,
9 for failure to remove architectural barriers structural in nature at defendants' PHO CLEMENT
10 RESTAURANT, a place of public accommodation, thereby discriminatorily denying plaintiff
11 and the class of other similarly situated persons with physical disabilities access to, the full and
12 equal enjoyment of, opportunity to participate in, and benefit from, the goods, facilities, services,
13 and accommodations thereof. Plaintiff seeks injunctive relief and damages pursuant to the
14 Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*; California Civil Code §§51,
15 51.5 and 54, *et seq.*; and California Health & Safety Code §19955, *et seq.*

16 2. Plaintiff CRAIG YATES is a person with physical disabilities who, on or about
17 December 18, 2009, January 23, 2010, February 11, 2010 and March 4, 2010, was an invitee,
18 guest, patron, customer at defendants' PHO CLEMENT RESTAURANT, in the City of San
19 Francisco, California. At said times and place, defendants failed to provide proper legal access
20 to the restaurant, which is a "public accommodation" and/or a "public facility" including, but not
21 limited to the entrance, path of travel, men's restroom and women's restroom. The denial of
22 access was in violation of both federal and California legal requirements, and plaintiff CRAIG
23 YATES suffered violation of his civil rights to full and equal access, and was embarrassed and
24 humiliated.

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1 **JURISDICTION AND VENUE:**

2 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
3 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
4 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
5 nucleus of operative facts and arising out of the same transactions, are also brought under parallel
6 California law, whose goals are closely tied with the ADA, including but not limited to violations
7 of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et*
8 *seq.*, including §19959; Title 24 California Building Standards Code.

9 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
10 founded on the facts that the real property which is the subject of this action is located at/near
11 239 Clement Street. in the City and County of San Francisco, State of California, and that
12 plaintiff's causes of action arose in this county.

13 **PARTIES:**

14 5. Plaintiff CRAIG YATES is a "physically handicapped person", a "physically
15 disabled person", and a "person with physical disabilities" (hereinafter the terms "physically
16 disabled", "physically handicapped" and "person with physical disabilities" are used
17 interchangeably, as these words have similar or identical common usage and legal meaning, but
18 the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically
19 handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other
20 statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff
21 CRAIG YATES is a "person with physical disabilities", as defined by all applicable California
22 and United States laws. Plaintiff is a triplegic. Plaintiff CRAIG YATES requires the use of a
23 wheelchair to travel about in public. Consequently, plaintiff CRAIG YATES is a member of that
24 portion of the public whose rights are protected by the provisions of Health & Safety Code
25 §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped
26 Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the
27 Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C.
28 §12101, *et seq.*

1 6. Defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and
2 MARIA LEE LEONG (a.k.a. MARIA LEON), As Trustees, OF THE ROBERTO TIM-HUNG
3 LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and
4 QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT (hereinafter
5 alternatively collectively referred to as "defendants") are the owners and operators, lessors and/or
6 lessees, or agents of the owners, lessors and/or lessees, of the public accommodation known as
7 PHO CLEMENT RESTAURANT, located at/near 239 Clement Street, San Francisco,
8 California, or of the building and/or buildings which constitute said public accommodation.

9 7. At all times relevant to this complaint, defendants ROBERTO TIM-HUNG
10 LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON), As
11 Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE
12 TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO
13 CLEMENT RESTAURANT, own and operate in joint venture the subject PHO CLEMENT
14 RESTAURANT as a public accommodation. This business is open to the general public and
15 conducts business therein. The business is a "public accommodation" or "public facility" subject
16 to the requirements of California Civil Code §§51, 51.5 and 54, *et seq.*, Health and Safety code
17 §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et seq.*

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COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

8. At all times relevant to this complaint, defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON), As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT are jointly and severally responsible to identify and remove architectural barriers at the subject restaurant pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent part:

§ 36.201 General

(b) *Landlord and tenant responsibilities.* Both the landlord who owns the building that houses a place of public accommodation and the tenant who owns or operates the place of public accommodation are public accommodations subject to the requirements of this part. As between the parties, allocation of responsibility for complying with the obligations of this part may be determined by lease or other contract.

28 CFR §36.201(b)

PRELIMINARY FACTUAL ALLEGATIONS:

9. The PHO CLEMENT, is a restaurant, located at/near 239 Clement Street, San Francisco, California. The PHO CLEMENT RESTAURANT, its entrance, path of travel, men's restroom, women's restroom, and its other facilities are each a "place of public accommodation or facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On information and belief, each such facility has, since July 1, 1970, undergone "alterations, structural repairs and additions," each of which has subjected the PHO CLEMENT RESTAURANT and each of its facilities, its entrance, path of travel, men's restroom and women's restroom to disability access requirements per the Americans with Disabilities Act Accessibility Guidelines (ADAAG), and Title 24 of the California Code of regulations (Title 24).

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COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES

1 10. On or about March 2000, defendants' and each of them purchased and/or
2 took possessory control of the premises now known as PHO CLEMENT RESTAURANT. At
3 all times prior thereto, defendants' and each of them were aware of their obligation prior to the
4 close of escrow, or upon taking possessory interest that public accommodations had a duty to
5 identify and remove architectural barriers and were aware that the restaurant was not accessible
6 to the disabled. Nevertheless, defendants' and each of them, operated restaurant as though it was
7 accessible.

8 11. At all times stated herein, defendants' and each of them with the knowledge that
9 each of them had a continuing obligation to identify and remove architectural barriers where it
10 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
11 compliant access to the subject accommodation.

12 12. At all times referred to herein and continuing to the present time, defendants, and
13 each of them, advertised, publicized and held out the PHO CLEMENT RESTAURANT as being
14 handicapped accessible and handicapped usable.

15 13. On or about December 18, 2009, January 23, 2010, February 11, 2010 and March
16 4, 2010, plaintiff CRAIG YATES was an invitee and guest at the subject PHO CLEMENT
17 RESTAURANT, for purposes of having food and drinks.

18 14. On or about December 18, 2009, plaintiff CRAIG YATES approached the double
19 entry doors of PHO CLEMENT RESTAURANT. Plaintiff CRAIG YATES struggled with the
20 doors due to excessive door pressure and a rapid closure rate. Plaintiff CRAIG YATES stressed
21 and strained himself while attempting to open the doors and enter the restaurant.

22 15. Plaintiff CRAIG YATES encountered and had the same experience with this
23 barrier on all occasions stated herein.

24 16. On or about December 18, 2009, plaintiff CRAIG YATES needed to use the
25 men's restroom. Plaintiff CRAIG YATES attempted to use the men's restroom but shelving and
26 storage materials blocked its entrance.

27 17. At said time and place, plaintiff CRAIG YATES was informed by a food server
28 that the men's restroom was not accessible and that he should use the women's restroom.

1 18. At said time and place, plaintiff CRAIG YATES attempted to use the women's
2 restroom. Plaintiff CRAIG YATES found that it was not accessible, to wit: the entry door swung
3 in and took up clear space; the lavatory was in a cabinet; there were no grab bars; the dispensers
4 were questionable as were other elements.

5 19. On or about January 29, 2010, plaintiff CRAIG YATES wrote the landlord and
6 the tenant about these barriers. Plaintiff CRAIG YATES never received a response, nor at
7 anytime were any of the barriers removed.

8 20. On or about January 23, 2010, February 11, 2010 and March 4, 2010, plaintiff
9 CRAIG YATES saw that no remedial work had been done, or any other steps taken to provide
10 for a more accessible restaurant.

11 21. Therefore, at said times and place, plaintiff CRAIG YATES, a person with a
12 disability, encountered the following inaccessible elements of the subject PHO CLEMENT
13 RESTAURANT which constituted architectural barriers and a denial of the proper and legally-
14 required access to a public accommodation to persons with physical disabilities including, but
15 not limited to:

- 16 a. lack of directional signage to show accessible routes of travel, i.e.
17 entrances;
- 18 b. lack of an accessible entrance due to excessive door pressure;
- 19 c. lack of a handicapped-accessible women's public restroom;
- 20 d. lack of a handicapped-accessible men's public restroom;
- 21 e. lack of a clear path of travel to sanitary facilities; and
- 22 f. On personal knowledge, information and belief, other public facilities and
23 elements too numerous to list were improperly inaccessible for use by
24 persons with physical disabilities.

25 22. At all times stated herein, the existence of architectural barriers at defendants'
26 place of public accommodation evidenced "actual notice" of defendants' intent not to
27 comply with the Americans with Disabilities Act of 1990 either then, now or in the future.

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1 23. On or about January 29, 2010, defendant(s) were sent two (2) letters by or on
2 behalf of plaintiff CRAIG YATES advising of the existence of architectural barriers, requesting a
3 response within 14 days and requesting remedial measures be undertaken within 90 days or an
4 explanation of why the time limit set could not be met and/or extenuating circumstances. Said
5 letters are attached hereto collectively as exhibit "A" and incorporated by reference as though
6 fully set forth herein. Defendants' failure to respond evidenced an intent not to seek or engage in
7 an early and reasonable resolution of the matter.

8 24. At all times stated herein, defendants, and each of them, did not act as reasonable
9 and prudent landlord/tenant and were "negligent per se" or at a minimum negligent for not
10 removing architectural barriers that would foreseeably prevent plaintiff CRAIG YATES from
11 receiving the same goods and services as able bodied people and some of which may and did pose
12 a threat of harm and/or personal injury to people with disabilities. Therefore as a legal result of
13 defendants breach of duty to remove those barriers encountered by plaintiff, plaintiff suffered
14 bodily injury.

15 25. As a legal result of defendants ROBERTO TIM-HUNG LEONG (a.k.a.
16 ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON). As Trustees, OF THE
17 ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED
18 MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT
19 RESTAURANT's failure to act as a reasonable and prudent public accommodation in identifying,
20 removing or creating architectural barriers, policies, practices and procedures that denied access to
21 plaintiff and other persons with disabilities, plaintiff suffered the damages as alleged herein.

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1 26. As a further legal result of the actions and failure to act of defendants, and as a
2 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
3 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff
4 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical
5 disabilities to full and equal access to public facilities, and further suffered bodily injury on or
6 about December 18, 2009, January 23, 2010, February 11, 2010 and March 4, 2010, including, but
7 not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up,
8 on, down, to, over, around and through architectural barriers. Specifically, as a legal result of
9 defendants negligence in the design, construction and maintenance of the existing double doors
10 with excessive door pressure, plaintiff suffered continuous, repetitive and cumulative trauma to
11 his right upper extremity while attempting to open said doors.

12 27. Further, plaintiff CRAIG YATES suffered emotional distress, mental distress,
13 mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation,
14 embarrassment, anger, disappointment and worry, expectedly and naturally associated with a
15 person with physical disabilities being denied access, all to his damages as prayed hereinafter in
16 an amount within the jurisdiction of this court. No claim is being made for mental and emotional
17 distress over and above that usually associated with the discrimination and physical injuries
18 claimed, and no expert testimony regarding this usual mental and emotional distress will be
19 presented at trial in support of the claim for damages.

20 28. Defendants', and each of their, failure to remove the architectural barriers
21 complained of herein created, at the time of plaintiff CRAIG YATES's first visit to said public
22 accommodation, and continues to create continuous and repeated exposure to substantially the
23 same general harmful conditions which caused plaintiff CRAIG YATES harm as stated herein.

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1 29. Plaintiff CRAIG YATES was denied his rights to equal access to a public facility
2 by defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE
3 LEONG (a.k.a. MARIA LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND
4 MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B.
5 TRAN, an individual dba PHO CLEMENT RESTAURANT, because defendants ROBERTO
6 TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARJA
7 LEON), As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG
8 REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba
9 PHO CLEMENT RESTAURANT maintained a restaurant without access for persons with
10 physical disabilities to its facilities, including but not limited to the entrance, path of travel, men's
11 restroom and women's restroom, and other public areas as stated herein, and continue to the date
12 of filing this complaint to deny equal access to plaintiff and other persons with physical
13 disabilities in these and other ways.

14 30. On information and belief, construction alterations carried out by defendants have
15 also triggered access requirements under both California law and the Americans with Disabilities
16 Act of 1990.

17 31. Plaintiff, as described hereinbelow, seeks injunctive relief to require the PHO
18 CLEMENT RESTAURANT to be made accessible to meet the requirements of both California
19 law and the Americans with Disabilities Act of 1990, whichever is more restrictive, so long as
20 defendants operate the PHO CLEMENT as a public facility.

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1 32. Plaintiff seeks damages for violation of their civil rights on December 18, 2009,
2 January 23, 2010, February 11, 2010 and March 4, 2010, and seeks statutory damages of not less
3 than \$4,000, pursuant to Civil Code §52(a) or alternatively \$1000 pursuant to Civil Code §54.3,
4 for each day after his visit that the trier of fact (court/jury) determines was the date that some or
5 all remedial work should have been completed under the standard that the landlord and tenant had
6 an ongoing duty to identify and remove architectural barriers where it was readily achievable to do
7 so, which deterred plaintiff CRAIG YATES from returning to the subject public accommodation
8 because of his knowledge and/or belief that neither some or all architectural barriers had been
9 removed and that said premises remains inaccessible to persons with disabilities whether a
10 wheelchair user or otherwise.

11 33. On information and belief, defendants have been negligent in their affirmative duty
12 to identify the architectural barriers complained of herein and negligent in the removal of some or
13 all of said barriers.

14 34. Because of defendants' violations, plaintiff and other persons with physical
15 disabilities are unable to use public facilities such as those owned and operated by defendants on a
16 "full and equal" basis unless such facility is in compliance with the provisions of the Americans
17 with Disabilities Act of 1990, Civil Code §54.1 and Health & Safety Code §19955, *et seq.* and
18 other accessibility law as plead herein. Plaintiff seeks an order from this court compelling
19 defendants to make the PHO CLEMENT accessible to persons with disabilities.

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1 35. On information and belief, defendants have intentionally undertaken to modify and
2 alter existing building(s), and have failed to make them comply with accessibility requirements
3 under the requirements of ADAAG and Title 24. The acts and omission of defendants, and each
4 of them, in failing to provide the required accessible public facilities at the time of plaintiff's visit
5 and injuries, indicate actual and implied malice toward plaintiff, and despicable conduct carried
6 out by defendants, and each of them, with a willful and conscious disregard for the rights and
7 safety of plaintiff and other similarly situated persons, and justify a trebling of damages as
8 provided by Civil Code §§52(a) and 54.3, in order to make a more profound example of
9 defendants, and each of them, to other operators and landlords of other restaurants and other
10 public facilities, and to punish defendants and to carry out the purposes of the Civil Code §§ 51,
11 51.5 and 54.

12 36. Plaintiff is informed and believes and therefore alleges that defendants ROBERTO
13 TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA
14 LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG
15 REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba
16 PHO CLEMENT RESTAURANT, and each of them, caused the subject building(s) which
17 constitute the PHO CLEMENT RESTAURANT to be constructed, altered and maintained in
18 such a manner that persons with physical disabilities were denied full and equal access to, within
19 and throughout said building(s) of the subject restaurant and were denied full and equal use of
20 said public facilities. Furthermore, on information and belief, defendants have continued to
21 maintain and operate said restaurant and/or its building(s) in such conditions up to the present
22 time, despite actual and constructive notice to such defendants that the configuration of the
23 subject restaurant and/or its building(s) is in violation of the civil rights of persons with physical
24 disabilities, such as plaintiff CRAIG YATES, and other members of the disability community.
25 Such construction, modification, ownership, operation, maintenance and practices of such public
26 facilities are in violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and
27 the ADA, 42 U.S.C. §12101, *et seq.*

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1 37. On personal knowledge, information and belief, the basis of defendants' actual and
2 constructive notice that the physical configuration of the facilities including, but not limited to,
3 architectural barriers constituting the PHO CLEMENT RESTAURANT and/or building(s) was in
4 violation of the civil rights of persons with physical disabilities, such as plaintiff, includes, but is
5 not limited to, communications with invitees and guests, plaintiff CRAIG YATES himself,
6 owners of other restaurants, hotels, motels and businesses, notices they obtained from
7 governmental agencies upon modification, improvement, or substantial repair of the subject
8 premises and other properties owned by these defendants, newspaper articles and trade
9 publications regarding the Americans with Disabilities Act of 1990 and other access laws, public
10 service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and
11 other similar information. Defendants' failure, under state and federal law, to make the PHO
12 CLEMENT RESTAURANT accessible is further evidence of defendants' conscious disregard for
13 the rights of plaintiff and other similarly situated persons with disabilities. Despite being
14 informed of such effect on plaintiff and other persons with physical disabilities due to the lack of
15 accessible facilities, defendants, and each of them, knowingly and willfully refused to take any
16 steps to rectify the situation and to provide full and equal access for plaintiff and other persons
17 with physical disabilities to the PHO CLEMENT. Said defendants, and each of them, have
18 continued such practices, in conscious disregard for the rights of plaintiff and other persons with
19 physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants
20 had further actual knowledge of the architectural barriers referred to herein by virtue of the
21 demand letter addressed to the defendants and served concurrently with the summons and
22 complaint. Said conduct, with knowledge of the effect it was and is having on plaintiff and other
23 persons with physical disabilities, constitutes despicable conduct in conscious disregard of the
24 rights and safety of plaintiff and of other similarly situated persons, justifying the imposition of
25 treble damages per Civil Code §§52 and 54.3.

38. Plaintiff CRAIG YATES and the disability community, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)

(On behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARJA LEE LEONG (a.k.a. MARIA LEON), As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive) (42 U.S.C. §12101, *et seq.*)

39. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 38 of this complaint.

40. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more fully protect:

some 43 million Americans with one or more physical or mental disabilities; [that] historically society has tended to isolate and segregate individuals with disabilities; [that] such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem; [that] the nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self-sufficiency for such individuals; [and that] the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous.

41. Congress stated as its purpose in passing the Americans with Disabilities Act of 1990 (42 U.S.C. §12102):

It is the purpose of this act (1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities; (2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities; (3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and (4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of discrimination faced day to day by people with disabilities.

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42. As part of the Americans with Disabilities Act of 1990, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (Section 301 42 U.S.C. §12181. *et seq.*). Among the public accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

(B) a restaurant, bar or other establishment serving food or drink.

42 U.S.C. §12181(7)(B)

43. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation."

44. The specific prohibitions against discrimination set forth in §302(b)(2)(a), 42 U.S.C. §12182(b)(2)(a) are:

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

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(iv) a failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities . . . where such removal is readily achievable; and

(v) where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily achievable, a failure to make such goods, services, facilities, privileges, advantages or accommodations available through alternative methods if such methods are readily achievable.

The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* - Effective January 31, 1993, the standards of the ADA were also incorporated into California Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and 52(a) and 54.3.

45. The removal of the barriers complained of by plaintiff as hereinabove alleged were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of PHO CLEMENT RESTAURANT pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of all the barriers complained of herein together was not "readily achievable," the removal of each individual barrier complained of herein was "readily achievable." On information and belief, defendants' failure to remove said barriers was likewise due to discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182 (b)(2)(A)(i) and (ii).

46. Per 42 U.S.C. §12181 (9), the term "readily achievable" means "easily accomplishable and able to be carried out without much difficulty or expense." The statute defines relative "expense" in part in relation to the total financial resources of the entities involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that plaintiff complains of herein were and are "readily achievable" by the defendants under the standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was not "readily achievable" for defendants to remove each of such barriers, defendants have failed to make the required services available through alternative methods which were readily achievable.

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1 47. On information and belief, construction work on, and modifications of, the subject
2 building(s) of the PHO CLEMENT RESTAURANT occurred after the compliance date for the
3 Americans with Disabilities Act, January 26, 1992, independently triggering access requirements
4 under Title III of the ADA.

5 48. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
6 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
7 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
8 of disability in violation of this title or have reasonable grounds for believing that plaintiff is about
9 to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning to or
10 making use of the public facilities complained of herein so long as the premises and defendants'
11 policies bar full and equal use by persons with physical disabilities.

12 49. 42 U.S.C. 12188 (a)(1) states: "Nothing in this section shall require a person with a
13 disability to engage in a futile gesture if such person has actual notice that a person or
14 organization covered by this title does not intend to comply with its provisions." Pursuant to this
15 section, plaintiff CRAIG YATES has not returned to defendants' premises since on or about
16 March 4, 2010, but on information and belief, alleges that defendants have continued to violate
17 the law and deny the rights of plaintiff and of other persons with physical disabilities to access this
18 public accommodation. Pursuant to 42 USC §12188(a)(2), "In cases of violations of
19 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
20 facilities readily accessible to and usable by individuals with disabilities to the extent required by
21 this title."

22 50. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
23 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
24 the Americans with Disabilities Act of 1990, including but not limited to an order granting
25 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
26 deemed to be the prevailing party.

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1 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
 2 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 3 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO
 4 TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a.
 5 MARIA LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA
 6 LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B.
 7 TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
 8 (California Civil Code §§54, 54.1, 54.3, *et seq*)

9 51. Plaintiff repleads and incorporates by reference as if fully set forth again herein, the
 10 allegations contained in paragraphs 1 through 50 of this complaint.

11 52. At all times relevant to this action, California Civil Code §54 has provided that
 12 persons with physical disabilities are not to be discriminated against because of physical handicap
 13 or disability. This section provides that:

14 (a) Individuals with disabilities . . . have the same rights as
 15 the general public to full and free use of the streets, highways,
 16 sidewalks, walkways, public buildings, medical facilities, including
 17 hospitals, clinics, and physicians' offices, and other public places.

18 53. California Civil Code §54.1 provides that persons with disabilities shall not be
 19 denied full and equal access to places of public accommodation or facilities:

20 (a)(1) Individuals with disabilities shall be entitled to full
 21 and equal access, as other members of the general public, to
 22 accommodations, advantages, facilities, medical facilities, including
 23 hospitals, clinics, and physicians' offices, and privileges of all
 24 common carriers, airplanes, motor vehicles, railroad trains,
 25 motorbuses, streetcars, boats, or any other public conveyances or
 26 modes of transportation (whether private, public, franchised,
 27 licensed, contracted, or otherwise provided), telephone facilities,
 28 adoption agencies, private schools, hotels, lodging places, places of
 public accommodation, amusement or resort, and other places to
 which the general public is invited, subject only to the conditions
 and limitations established by law, or state or federal regulation, and
 applicable alike to all persons.

Civil Code §54.1(a)(1)

54. California Civil Code §54.1 further provides that a violation of the Americans with
 Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the
 Americans with Disabilities Act of 1990 (Public Law 101-336) also
 constitutes a violation of this section, and nothing in this section
 shall be construed to limit the access of any person in violation of
 that act.

Civil Code §54.1(d)

1 55. Plaintiff CRAIG YATES is a person within the meaning of Civil Code §54.1
 2 whose rights have been infringed upon and violated by the defendants, and each of them, as
 3 prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendants
 4 knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil
 5 Code §§54 and 54.1. Plaintiff has been and continue to be denied full and equal access to
 6 defendants' PHO CLEMENT RESTAURANT. As a legal result, plaintiff is entitled to seek
 7 damages pursuant to a court or jury determination, in accordance with California Civil Code
 8 §54.3(a) for each day on which he visited or have been deterred from visiting the subject
 9 restaurant because of his knowledge and belief that the PHO CLEMENT is inaccessible to
 10 persons with disabilities. California Civil Code §54.3(a) provides:

11 Any person or persons, firm or corporation, who denies or interferes
 12 with admittance to or enjoyment of the public facilities as specified
 13 in Sections 54 and 54.1 or otherwise interferes with the rights of an
 14 individual with a disability under Sections 54, 54.1 and 54.2 is
 15 liable for each offense for the actual damages and any amount as
 16 may be determined by a jury, or the court sitting without a jury, up
 17 to a maximum of three times the amount of actual damages but in
 18 no case less than . . . one thousand dollars (\$1,000) and . . .
 19 attorney's fees as may be determined by the court in addition
 20 thereto, suffered by any person denied any of the rights provided in
 21 Sections 54, 54.1 and 54.2.

22 Civil Code §54.3(a)

23 56. On or about December 18, 2009, January 23, 2010, February 11, 2010 and March
 24 4, 2010, plaintiff CRAIG YATES suffered violations of Civil Code §§54 and 54.1 in that plaintiff
 25 CRAIG YATES was denied access to the entrance, path of travel, men's restroom and women's
 26 restroom and other public facilities as stated herein at the PHO CLEMENT RESTAURANT and
 27 on the basis that plaintiff CRAIG YATES was a person with physical disabilities.
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1 57. As a result of the denial of equal access to defendants' facilities due to the acts and
2 omissions of defendants, and each of them, in owning, operating and maintaining these subject
3 public facilities, plaintiff suffered violations of plaintiff's civil rights, including but not limited to
4 rights under Civil Code §§54, 54.1 and 54.3, and plaintiff CRAIG YATES suffered physical
5 discomfort, bodily injury on or about December 18, 2009, January 23, 2010, February 11, 2010
6 and March 4, 2010, including, but not limited to, fatigue, stress, strain and pain in wheeling and
7 attempting to and/or transferring up, on, down, to, over, around and through architectural barriers.
8 Specifically, as a legal result of defendants negligence in the design, construction and
9 maintenance of the existing double doors with excessive door pressure, plaintiff suffered
10 continuous, repetitive and cumulative trauma to his right upper extremity while attempting to
11 open said doors.

12 58. Further, plaintiff CRAIG YATES suffered mental distress, mental suffering, mental
13 anguish, which includes shame, humiliation, embarrassment, frustration, anger, disappointment
14 and worry, all of which are expectedly and naturally associated with a denial of access to a person
15 with physical disabilities, all to plaintiff's damages as hereinafter stated. Defendants' actions and
16 omissions to act constituted discrimination against plaintiff on the sole basis that plaintiff is a
17 person or an entity that represents persons with physical disabilities and unable, because of the
18 architectural barriers created and maintained by the defendants in violation of the subject laws, to
19 use the public facilities hereinabove described on a full and equal basis as other persons.

20 59. Plaintiff has been damaged by defendants', and each of their, wrongful conduct and
21 seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights
22 as a person or an entity that represents persons with physical disabilities on or about December 18,
23 2009, January 23, 2010, February 11, 2010 and March 4, 2010, and on a continuing basis since
24 then, including statutory damages, a trebling of all of actual damages, general and special damages
25 available pursuant to §54.3 of the Civil Code according to proof.

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60. As a result of defendants', and each of their, acts and omissions in this regard, plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and enforce the provisions of the law protecting access for persons with physical disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally, plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to compel the defendants to make their facilities accessible to all members of the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

11. **III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.***
 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
 (Health & Safety Code §19955, *et seq.*)

61. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 60 of this complaint.

62. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

1 63. Health & Safety Code §19956, which appears in the same chapter as §19955,
2 provides in pertinent part, "accommodations constructed in this state shall conform to the
3 provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government
4 Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all
5 public accommodations constructed or altered after that date. On information and belief, portions
6 of the PHO CLEMENT RESTAURANT and/or of the building(s) were constructed and/or altered
7 after July 1, 1970, and substantial portions of the subject restaurant and/or the building(s) had
8 alterations, structural repairs, and/or additions made to such public accommodations after July 1,
9 1970, thereby requiring said restaurant and/or building to be subject to the requirements of Part
10 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs or
11 additions per Health & Safety Code §19959.

12 64. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
13 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
14 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
15 Regulations and these regulations must be complied with as to any alterations and/or
16 modifications of the subject restaurant and/or the building(s) occurring after that date.
17 Construction changes occurring prior to this date but after July 1, 1970 triggered access
18 requirements pursuant to the "ASA" requirements, the American Standards Association
19 Specifications, A117.1-1961. On information and belief, at the time of the construction and
20 modification of said building, all buildings and facilities covered were required to conform to
21 each of the standards and specifications described in the American Standards Association
22 Specifications and/or those contained in Title 24 of the California Building Standards Code.

23 65. Restaurants such as the PHO CLEMENT are "public accommodations or facilities"
24 within the meaning of Health & Safety Code §19955, *et seq.*

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66. As a result of the actions and failure to act of defendants, and as a result of the failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil rights and plaintiff's rights as a person with physical disabilities to full and equal access to public facilities.

67. Attorneys' Fees -- As a result of defendants' acts and omissions in this regard, plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's civil rights and enforce provisions of the law protecting access for the persons with physical disabilities and prohibiting discrimination against the persons with physical disabilities, and to take such action both in plaintiff's own interests and in order to enforce an important right affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)). Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

68. Plaintiff seeks injunctive relief for an order compelling defendants, and each of them, to make the subject place of public accommodation readily accessible to and usable by persons with disabilities.

IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON), As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
(Civil Code §51, 51.5)

69. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 68 of this complaint.

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1 70. Defendants' actions and omissions and failure to act as a reasonable and prudent
2 public accommodation in identifying, removing and/or creating architectural barriers, policies,
3 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
4 Unruh Act provides:

5 This section shall be known, and may be cited, as the Unruh
6 Civil Rights Act.

7 All persons within the jurisdiction of this state are free and
8 equal, and no matter what their sex, race, color, religion, ancestry,
9 national origin, or **disability** are entitled to the full and equal
10 accommodations, advantages, facilities, privileges, or services in all
11 business establishments of every kind whatsoever.

12 This section shall not be construed to confer any right or
13 privilege on a person that is conditioned or limited by law or that is
14 applicable alike to persons of every sex, color, race, religion,
15 ancestry, national origin, or **disability**.

16 Nothing in this section shall be construed to require any
17 construction, alteration, repair, structural or otherwise, or
18 modification of any sort whatsoever, beyond that construction,
19 alteration, repair, or modification that is otherwise required by other
20 provisions of law, to any new or existing establishment, facility,
21 building, improvement, or any other structure . . . nor shall anything
22 in this section be construed to augment, restrict, or alter in any way
23 the authority of the State Architect to require construction,
24 alteration, repair, or modifications that the State Architect otherwise
25 possesses pursuant to other . . . laws.

26 A violation of the right of any individual under the
27 Americans with Disabilities Act of 1990 (Public Law 101-336) shall
28 also constitute a violation of this section.

As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
"intent" of the defendants in not complying with barrier removal is not an issue. Hence, the
failure on the parts of defendants, as reasonable and prudent public accommodations, in acting or
failing to act to identify and remove barriers can be construed as a "negligent per se" act of
defendants, and each of them.

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1 71. The acts and omissions of defendants stated herein are discriminatory in nature and
2 in violation of Civil Code §51.5:

3 No business establishment of any kind whatsoever shall
4 discriminate against, boycott or blacklist, refuse to buy from, sell to,
5 or trade with any person in this state because of the race, creed,
6 religion, color, national origin, sex, or **disability** of the person or of
the person's partners, members, stockholders, directors, officers,
managers, superintendents, agents, employees, business associates,
suppliers, or customers.

7 As used in this section, "person" includes any person, firm
8 association, organization, partnership, business trust, corporation,
limited liability company, or company.

9 Nothing in this section shall be construed to require any
10 construction, alteration, repair, structural or otherwise, or
modification of any sort whatsoever, beyond that construction,
11 alteration, repair or modification that is otherwise required by other
provisions of law, to any new or existing establishment, facility,
12 building, improvement, or any other structure . . . nor shall anything
in this section be construed to augment, restrict or alter in any way
13 the authority of the State Architect to require construction,
alteration, repair, or modifications that the State Architect otherwise
14 possesses pursuant to other laws.

15 72. Defendants' acts and omissions as specified have denied to the plaintiff full and
16 equal accommodations, advantages, facilities, privileges and services in a business establishment.
17 on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil
18 Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, "A
19 violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public
20 Law 101-336) shall also constitute a violation of this section." Plaintiff accordingly incorporates
21 the entirety of his above cause of action for violation of the Americans with Disabilities Act at
22 §39. *et seq.*, as if repled herein.

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1 73. As a further legal result of the actions and failure to act of defendants, and as a
2 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
3 herein, plaintiff was denied his civil rights to full and equal access to public facilities. Plaintiff
4 CRAIG YATES suffered a loss of his civil rights and his rights as a person with physical
5 disabilities to full and equal access to public facilities, and further suffered bodily injury on or
6 about December 18, 2009, January 23, 2010, February 11, 2010 and March 4, 2010, including, but
7 not limited to, fatigue, stress, strain and pain in wheeling and attempting to and/or transferring up,
8 on, down, to, over, around and through architectural barriers. Specifically, as a legal result of
9 defendants negligence in the design, construction and maintenance of the existing double doors
10 with excessive door pressure, plaintiff suffered continuous, repetitive and cumulative trauma to
11 his right upper extremity while attempting to open said doors.

12 74. Further, plaintiff CRAIG YATES suffered mental distress, mental
13 suffering, mental anguish, which includes shame, humiliation, embarrassment, frustration, anger,
14 disappointment and worry, all of which are expectedly and naturally associated with a denial of
15 access to a person with physical disabilities, all to plaintiff's damages as hereinafter stated.
16 Defendants' actions and omissions to act constituted discrimination against plaintiff on the sole
17 basis that plaintiff is a person or an entity that represents persons with physical disabilities and
18 unable, because of the architectural barriers created and maintained by the defendants in violation
19 of the subject laws, to use the public facilities hereinabove described on a full and equal basis as
20 other persons.

21 75. Plaintiff CRAIG YATES is entitled to the rights and remedies of §52(a)
22 of the Civil Code, including trebling of actual damages (defined by §52(h) of the Civil Code to
23 mean "special and general damages"), as well as to reasonable attorneys' fees and costs, as is
24 allowed by statute, according to proof if deemed to be the prevailing party.

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1 **PRAYER:**

2 Plaintiff prays that this court award damages and provide relief as follows:

3 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
 4 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
 5 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)**
 6 (On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO
 7 TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a.
 8 MARIA LEON), As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA
 9 LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B.
 10 TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
 11 (42 U.S.C. §12101, *et seq.*)

12 1. For injunctive relief, compelling defendants ROBERTO TIM-HUNG LEONG
 13 (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON), As Trustees, OF
 14 THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST
 15 DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT
 16 RESTAURANT, inclusive, to make the PHO CLEMENT RESTAURANT, located at 239
 17 Clement Street, San Francisco, California, readily accessible to and usable by individuals with
 18 disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies,
 19 practice, eligibility criteria and procedures so as to afford full access to the goods, services,
 20 facilities, privileges, advantages and accommodations being offered.

21 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed the
 22 prevailing party; and

23 3. For such other and further relief as the court may deem proper.

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II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive) (California Civil Code §§54, 54.1, 54.3. *et seq.*)

1. For injunctive relief, compelling defendants ROBERTO TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON). As Trustees, OF THE ROBERTO TIM-HUNG LEONG AND MARIA LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive, to make the PHO CLEMENT RESTAURANT, located at 239 Clement Street, San Francisco, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public accommodation.

3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure §1021.5, if plaintiffs are deemed the prevailing party;

4. Treble damages pursuant to Civil Code §54.3;

5. General damages according to proof;

6. For all costs of suit;

7. Prejudgment interest pursuant to Civil Code §3291; and

8. Such other and further relief as the court may deem just and proper.

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**III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO
TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a.
MARIA LEON). As Trustees. OF THE ROBERTO TIM-HUNG LEONG AND MARIA
LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B.
TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
(Health & Safety code §19955, *et seq.*)

1. For injunctive relief, compelling defendants ROBERTO TIM-HUNG LEONG
(a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a. MARIA LEON), As Trustees. OF
THE ROBERTO TIM-HUNG LEONG AND MARJA LEE LEONG REVOCABLE TRUST
DATED MARCH 21, 2000; and QUANG B. TRAN, an individual dba PHO CLEMENT
RESTAURANT, inclusive. to make the PHO CLEMENT RESTAURANT, located at 239
Clement Street, San Francisco, California, readily accessible to and usable by individuals with
disabilities, per state law.

2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

3. For all costs of suit;

4. For prejudgment interest pursuant to Civil Code §3291;

5. Such other and further relief as the court may deem just and proper.

**IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO
FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES,
PRIVILEGES AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL
CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS ACT)**

(On Behalf of Plaintiff CRAIG YATES, an individual and Against Defendants ROBERTO
TIM-HUNG LEONG (a.k.a. ROBERTO LEON) and MARIA LEE LEONG (a.k.a.
MARIA LEON). As Trustees. OF THE ROBERTO TIM-HUNG LEONG AND MARIA
LEE LEONG REVOCABLE TRUST DATED MARCH 21, 2000; and QUANG B.
TRAN, an individual dba PHO CLEMENT RESTAURANT, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

1. All statutory damages as afforded by Civil Code §52(a) for the date of incident and
for each occasion on which plaintiff was deterred from returning to the subject public
accommodation;

2. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the prevailing
party;

3. General damages according to proof;
4. Treble damages pursuant to Civil Code §52(a);
5. For all costs of suit;
6. Prejudgment interest pursuant to Civil Code §3291; and
7. Such other and further relief as the court may deem just and proper.

Dated: 3/11/10, 2010

THOMAS E. FRANKOVICH.
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff CRAIG YATES, an individual

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury for all claims for which a jury is permitted.

Dated: 3/11/10, 2010

THOMAS E. FRANKOVICH.
A PROFESSIONAL LAW CORPORATION

By: 

THOMAS E. FRANKOVICH
Attorneys for Plaintiff CRAIG YATES, an individual

Craig Thomas Yates
1004 Los Gamos Road, Unit E
San Rafael, CA 94903

January 29, 2010

Manager
PHO Clement
239 Clement Street
San Francisco, CA 94118

Dear Manager:

Recently, I visited PHO Clement. The food was quite good and reasonably priced.

That part of my experience was good. However, there are a few problems that need your immediate attention. You see, I use a wheelchair. Wheelchair users like me (as I did) had a problem with the double door entrance on a slope with heavy door pressure. It's a struggle to open. The men's room was not usable because the shelves outside the restroom block the pathway to get to the door of the restroom. One of the food servers told me that the men's restroom was not accessible and I should use the womens restroom. Okay, that's alright but when I went to use it the door swung in so I couldn't maneuver and close the door for privacy. Also there is a vanity or cabinet in there which also takes up room to maneuver. It should come out. I didn't see any grab bars. You need them. You can understand what this is like, right? So, that part of my experience was not good.

You need to learn what needs to be done and do it now. So, please call Pacific ADA and IT Center in Oakland at 1-800-949-4232, and ask them to send you all the information they have on access. Remember, wheelchair users have an old saying: "Access delayed is Access denied." You understand, right? Anyway, please write me when you get this letter and make me a promise that you will take care of this right away. Give me a date. Thanks!

Sincerely,



Craig M. Yates

Craig Thomas Yates
1004 Los Gamos Road, Unit E
San Rafael, CA 94903

January 29, 2010

Owner of the Building for
PHO Clement
239 Clement Street
San Francisco, CA 94118

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